

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY NEW DELHI

S E C R E T STATE 025558

EXDIS

E.O. 11652: GDS

TAGS: SREF OGEN IN UR UK US

SUBJECT: REFUGEES: REQUEST FOR INSTRUCTIONS

REF: NEW DELHI 0727

1. THANK YOU FOR YOUR WELL-REASONED AND PUNGENT TELEGRAM WHICH WAS PROMPTED BY THE PAKHAMOV CASE. WE HAVE BEEN WRESTLING WITH THIS PROBLEM IN INDIA FOR SOME YEARS AND NOW APPEARS TO BE A GOOD TIME TO EXAMINE OUR POLICY IN DEPTH. THE FOLLOWING ARE SOME OF OUR PRELIMINARY THOUGHTS ON YOUR TELEGRAM FOR YOUR CONSIDERATION.

2. WE HAVE ALWAYS BELIEVED THAT FOREIGN NATIONALS WHO REQUEST ASYLUM OF THE USG EITHER IN THE UNITED STATES ITSELF OR AT OUR FACILITIES ABROAD HAVE THE RIGHT TO EXPECT THAT THEIR REQUESTS BE CONSIDERED ON THEIR MERITS. IN REQUESTING ASYLUM THE APPLICANT MUST MAKE A REASONABLE CASE THAT "OWING TO A WELL-FOUNDED FEAR OF BEING PERSECUTED FOR SECRET

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REASONS OF RACE, RELIGION, NATIONALITY, POLITICAL OPINION OR MEMBERSHIP IN A PARTICULAR SOCIAL GROUP, HE IS UNWILLING OR UNABLE TO RETURN TO THE COUNTRY OF HIS NATIONALITY" --- THAT HE IS IN FACT A REFUGEE WITHIN THE DEFINITION OF THE

CONVENTION RELATING TO THE STATUS OF REFUGEES. IN HANDLING ASYLUM CASES, BOTH IN THE U.S. AND ABROAD, IT IS U.S. POLICY NOT ARBITRARILY OR SUMMARILY TO REFUSE A REQUEST FOR ASYLUM. WE GIVE EACH INDIVIDUAL A FAIR HEARING. THE KUDIRKA CASE IN 1970 STIMULATED A GREATER PUBLIC KNOWLEDGE OF AND SYMPATHY FOR THE RIGHTS OF REFUGEES.

3. THE CONVENTION PROVIDES THAT EACH CONTRACTING STATE SHALL DETERMINE WHETHER A PERSON IS A REFUGEE. IN THE U.S. THE POTENTIAL REFUGEE IS GIVEN A HEARING BEFORE THE IMMIGRATION SERVICE, A RECOMMENDATION ON THE VALIDITY OF HIS CLAIM TO REFUGEE STATUS IS OBTAINED FROM THE DEPARTMENT OF STATE, AND APPEALS OF AN UNFAVORABLE DECISION CAN BE MADE TO THE BOARD OF IMMIGRATION APPEALS AND THE COURTS. ONCE A DETERMINATION IS MADE THAT AN APPLICANT FOR ASYLUM IS A REFUGEE, THEN SIGNATORIES TO THE CONVENTION ARE BOUND BY ARTICLE 33 WHICH PROVIDES THAT "NO CONTRACTING STATE SHALL EXPEL OR RETURN A REFUGEE IN ANY MANNER WHATSOEVER TO THE FRONTIERS OF TERRITORIES WHERE HIS LIFE OR FREEDOM WOULD BE THREATENED ON ACCOUNT OF RACE, RELIGION, NATIONALITY, MEMBERSHIP OF A PARTICULAR SOCIAL GROUP OR POLITICAL OPINION."

4. THE U.S. HAS ALWAYS HELD THAT DIPLOMATIC ASYLUM IS NOT GROUNDED IN INTERNATIONAL LAW; THAT ASYLUM IS LIMITED TO TEMPORARY REFUGE FOR PERSONS WHO ARE IN DANGER OF SERIOUS HARM (ESPECIALLY THOSE FLEEING FROM HOT PURSUIT) AND REFUGE IS GRANTED ONLY FOR THE PERIOD DURING WHICH ACTIVE DANGER CONTINUES. ASYLUM IS ALSO THE RIGHT AND RESPONSIBILITY OF THE GOVERNMENT OF THE COUNTRY IN WHOSE TERRITORY THE REQUEST IS MADE. WE PREFER THAT THESE GOVERNMENTS ASSUME THEIR RESPONSIBILITIES PROVIDED THAT THE RIGHTS OF THE ASYLUM SEEKER ARE ADEQUATELY PROTECTED AND THAT THERE IS NO DANGER OF FORCIBLE REPATRIATION WITHOUT DUE PROCESS. IN GENERAL, WE COOPERATE CLOSELY WITH COUNTRIES THAT HAVE SIGNED THE CONVENTION AND WILL USUALLY REFER AN ASYLUM SEEKER TO THE HOST GOVERNMENT IN SUCH COUNTRIES.

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5. WE FULLY RECOGNIZE THE EXTREMELY DIFFICULT AND EMBARRASSING SITUATION IN WHICH AN EMBASSY IS PLACED WITH ITS HOST GOVERNMENT, AND THE DANGER TO CAREFULLY NURTURED RELATIONSHIPS, WHICH CAN RESULT FROM OUR AFFORDING AN ASYLUM SEEKER TEMPORARY PROTECTION AND ASSISTANCE, AND WHICH ALSO SUBJECTS THE HOST GOVERNMENT TO PRESSURES FROM THE COUNTRY OF THE ASYLUM SEEKER'S NATIONALITY. UNDERLYING SUCH U.S. ACTION, HOWEVER, IS A MEASURE OF COMPASSION, WHICH IN WORLD OPINION AND TO THE AMERICAN PUBLIC IS MORE IN KEEPING WITH OUR TRADITIONS THAN STRICT OBSERVANCE OF LESS UNDERSTOOD LEGALITIES. CONCERN FOR THE INDIVIDUAL MAY HAVE TO TAKE PRECEDENCE OVER DIPLOMACY IN SOME INSTANCES. A VERY SKILLFUL DIPLOMACY MUST BE BROUGHT TO BEAR IN THE AFTERMATH, BUT AGAIN, IN THE LONG

TERM, IF NOT THE SHORT, THE REPAIR OF RELATIONSHIPS
MAY PROVE TO BE A LESS FORMIDABLE UNDERTAKING, BECAUSE
THE ACTIONS IN QUESTION HAVE A HUMANITARIAN BASE.

6. IN PROCESSING ASYLUM REQUESTS MADE AT OUR MISSIONS
ABROAD, WE HAVE TWO MAJOR PROBLEM COUNTRIES--JAPAN AND*INDIA. THE FORMER IS A PROBLEM BECAUSE THERE IS NOT
PROVISION IN JAPANESE LAW FOR ASYLUM AND THE LAW OFFERS
NO CHOICE BUT TO RETURN THE REFUGEE TO THE AUTHORITIES OF
THE COUNTRY OF HIS NATIONALITY. HOWEVER, THE JAPANESE
ARE NOW TAKING A MORE COMPASSIONATE VIEW OF REFUGEES AND
ARE CONSIDERING POSSIBLE ACCESSION TO THE CONVENTION.
THEY COOPERATE VERY CLOSELY WITH US ON ASYLUM CASES AND IN
RECENT CASES THEY PERMITTED US THE TIME NECESSARY TO MAKE
A DETERMINATION OF REFUGEE STATUS AND TO MAKE ARRANGEMENTS
FOR RESETTLEMENT IN THE U.S. OR ELSEWHERE. THE SIT-
UATION IS FAR DIFFERENT IN INDIA WHICH HAS ACTIVELY
ASSERTED ITS POSITION THAT IT HAS THE SOLE RIGHT TO DECIDE
ON REQUESTS FOR ASYLUM MADE ON ITS TERRITORY. IN ADDITION
INDIAN GOVERNMENT'S TRACK RECORD HAS NOT BEEN VERY GOOD
ON PAST CASES INCLUDING THE PAKHOMOV CASE.

7. ASYLUM REQUESTS AT OUR EMBASSIES ABROAD COME MAINLY
FROM EASTERN EUROPEANS ALTHOUGH REQUESTS BY OTHER NATIONAL-
ITIES ARE INCREASING. WE FIND THAT THERE ARE USUALLY FOUR
CLASSES OF EASTERN EUROPEAN APPLICANTS: (A) THE DEFECTOR,
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NORMALLY HANDLED THROUGH OTHER CHANNELS; (B) A
REFUGEE WHO IS GENUINELY AFRAID OF GOING BACK TO HIS
COUNTRY OF ORIGIN BECAUSE HE HAS COMMITTED SOME OVERT ACT
KNOWN TO THE AUTHORITIES OF HIS COUNTRY OF NATIONALITY,
SUCH AS DESERTING HIS SHIP, FLEEING FROM A TOUR GROUP AND
WHO IS THUS ALREADY IN JEOPARDY IF HE RETURNS TO HIS NATIVE
COUNTRY; (C) THOSE WHO HAVE PLANNED TO ESCAPE FROM THEIR
COUNTRY AND SEIZE THE OPPORTUNITY TO DO SO WHEN THEY GET
OUT ON A TOUR GROUP OR FOR STUDY ABROAD BUT WHO ARE NOT
YET IN JEOPARDY; (D) THOSE WHO ARE OPPORTUNISTS OR WHO ARE
SEEKING ECONOMIC GAIN WITH NO REAL FEAR OF PERSECUTION IF
THEY RETURN TO THEIR COUNTRY OF NATIONALITY. WITH THE
NECESSARY TIME, WE CAN ATTEMPT TO DIFFERENTIATE AMONG
THESE CATEGORIES - DO SECURITY CHECKS AND DO MORE THAN
MERELY ACCEPT THE APPLICANT'S WORD THAT HE IS WHO HE SAYS
HE IS AND THAT HE FACES PROBLEMS ON HIS RETURN TO HIS
NATIVE COUNTRY. WE DO NOT ALWAYS HAVE THE TIME TO MAKE
THESE DISTINCTIONS ADEQUATELY IN CASES THAT SHOW UP IN
INDIA. FURTHER, WE ARE FACED WITH THE POSSIBILITY THAT IF
THE GOVERNMENT OF INDIA LEARNS OF A REFUGEE'S APPROACH TO
US, THE REFUGEE MAY BE RETURNED BY THE GOI TO HIS EMBASSY
WITH THE INFORMATION THAT HE APPLIED FOR ASYLUM AT THE
U.S. EMBASSY. THIS INFORMATION MAY IN ITSELF CREATE A
THREAT TO THE REFUGEE'S LIFE AND FREEDOM WHEN HE RETURNS.

8. AS THE EMBASSY IS AWARE, WE PREFER TO GET THE REFUGEE ADMITTED INTO A WESTERN EUROPEAN COUNTRY WHERE HE CAN APPLY FOR ENTRY INTO THE U.S. AS A REFUGEE (7TH PREFERENCE UNDER THE IMMIGRATION ACT). ANOTHER METHOD OF PROCESSING IS TO REQUEST THE IMMIGRATION SERVICE TO PAROLE THE REFUGEE INTO THE U.S. A THIRD POSSIBILITY IS ISSUING THE REFUGEE A PRO-FORMA TOURIST VISA TO ENABLE HIM TO GET ON AN AIRCRAFT AND TO TRANSIT A WESTERN EUROPEAN COUNTRY WHERE HE CAN APPLY FOR 7TH PREFERENCE.

9. WE WISH TO SPEED UP THIS PROCESS AND PLAN TO ASK THE IMMIGRATION SERVICE TO DELEGATE PAROLE AUTHORITY TO THE INS WORKING LEVEL TO ENABLE A DECISION TO B

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